

NO. 18-6784

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL RIVERA

*Petitioner,*

v.

STATE OF FLORIDA

*Respondent.*

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PETITION FOR WRIT OF WRIT OF REHEARING ON DENIAL  
OF EXTRAORDINARY WRIT OF HABEAS CORPUS DUE TO  
FLAGRANT AND BLATANT UNCONSTITUTIONAL DENIAL IN  
THE PETITIONER'S UNLAWFUL AND ILLEGAL DETENTION  
IN VIOLATION OF TITLE 28 U.S.C. §2241(a)(3) TITLE 18 U.S.C.  
§242 AND THE UNITED STATES CONSTITUTION ART. III, CL.2,  
AND AMENDMENTS 4, 5; 8; AND 14(1)

PROVIDED TO  
SOUTH FLORIDA RECEPTION CENTER  
on 2/15/19 FOR MAILING.

BY: LS  
OFFICER'S INITIALS

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GROUND PRESENTED FOR REVIEW AS BRIEF REQUIRED BY S.C. RULE  
44.2.6; RULE 19.3; RULE 29.2(4)(b)(c) AND TITLE 18 U.S.C.A. RULE 52(b),  
FED.R.CRIM.P. THESE GROUNDS THAT WERE NOT PREVIOUSLY PRESENTED  
IN THE UNITED STATES SUPREME COURT CANNOT SUPERCEDE OR  
DIMINISH THE UNITED STATES CONSTITUTION

GROUND ONE

WHETHER ... RESPECT OF THE HONORABLE SUPREME COURT JUSTICE UNDER WHICH PROVISIONS, STATUTES OR REGULATIONS OR CITATION OR CASE LAWS ... HOW THIS COURT CAN DENY A UNCONSTITUTIONAL NARROW PLAIN ERROR THAT MANIFEST INJUSTICE CONVICTION IN JUDGMENT OF ACQUITTAL **AND** IN A CONVICTION FOR A CRIME NOT CHARGED IN THE INDICTMENT BY THE GRAND JURY, WHERE THE POWER OF THE U.S. CONSTITUTION OF THE FIFTH AMENDMENT IS NOT LIMITED POWER?

GROUND TWO

WHETHER ... RESPECT OF THE HONORABLE SUPREME COURT JUSTICE ALL JUSTICES AND JUDGES TAKE AN OATH TO UPHOLD THE U.S. CONSTITUTION ARTICLE VI., CL. 2 THE LAW AND THE TRUST IS THE JUSTICES AND JUDGES THEY WILL LIVE UP TO THIS PROMISE UNDER TITLE 28 U.S.C. §453. HOW OR WHY THE COURT DENIED WRIT OF HABEAS CORPUS JUDGMENT OF ACQUITTAL, CONVICTION CRIME NOT CHARGED IN THE INDICTMENT BY THE GRAND JURY **AND** A CONVICTION WITHOUT ANY EXISTING EVIDENCE AT TRIAL OF A MANIFEST INJUSTICE IN VIOLATION OF THE U.S. CONST. AMENDS. 5, 8 AND 14(1)?

GROUND THREE

WHETHER ...“UNCONSTITUTIONAL NARROW PLAIN ERROR VIOLATION OCCUR IN THE U.S. CONST. ARTICLES AND AMENDMENTS AS NOT SOLVED BY THE UNITED STATES SUPREME COURT THAT IS THE DIMINISH OF THE UNITED STATES CONSTITUTIONS IN VIOLATION OF THE OATH OVER THE UNITED STATES CONSTITUTIONS TITLE 28 U.S.C. §453 AND THE U.S. CONST. ART. VI., CL 2; AND AMENDS. IX; XI AND XIV THIS CONVICTIONS THAT DEPRIVE THE PETITIONER OF LIFE, LIBERTY, AND PROPERTY WITHOUT DUE PROCESS OF LAW THE UNITED STATES CONSTITUTIONS DO NOT HAVE ANY MEANING IN THIS CASE. THE COURT’S, THE CONGRESS AND THE STATES DO NOT HAVE TO GO BOUND BY THE U.S. CONST. ANY MORE???

The Petitioner's questions are presented for review under the U.S. Const. Amend. IV. There is no probable cause to detain the Petitioner in violation of the U.S. Const. Amends. 5; 8; and 14(1); under Title 28 U.S.C. §2241(3); Title 18 U.S.C.A. §242. See: *Sessions v. Dimaya*, 138 S.Ct. 1204 @ 1243 (2018); *Caperton v. A.T. Massey*, 556 U.S. 868, 891-893, 129 S.Ct. 2252, 2267-2269, 176 L.Ed.2d 1208 (2009); *Bond v. Floyd*, 87 S.Ct. 339, 347, 385 U.S. 116, 17 L.Ed.2d 235 (1966). *supra*.

Now since this Honorable U.S. Supreme Court put limited power to the U.S. Constitution by did minimize the Petitioner's unconstitutional claims by simply denying the claims that show the U.S. Constitution being defeated by the Petition for writ of habeas corpus.

*SAMUEL RIVERA v. STATE OF FLORIDA*

The Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida  
Case No.: 85-25037

LIST OF PARTIES

S.C. Rule 12.2; Rule 29.2; and Rule 39.1

[√] All parties that appear in this cover page be served on every party to the proceeding with respect to which relief sought. All persons served are deemed Respondent's for all purposes in the proceeding in this court.

[√] All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed [p]arties entitled to file documents in the court after the case is placed on the docket, and that time will not be extended Counsel for such Respondent shall ensure that Counsel of record for all parties receive notice of its intention to file a objection in support within 15 days after the writ for rehearing is placed on the docket.

Office of the Clerk  
United States Supreme Court  
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Washington, D.C. 20543

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PETITION FOR WRIT OF REHEARING ON DENIAL OF  
EXTRAORDINARY WRIT FOR HABEAS CORPUS THAT  
PETITIONER RESPECTFULLY PRAYS GOOD FAITH THAT  
WRIT TO BE REVIEW IN THE BELOW JUDGMENT.

Petitioner Samuel Rivera (Rivera) *in pro se*, refilled again on February 15, 2019, Petitioner received this court's order on February 6, 2019. The Petitioner files this writ for rehearing to object to the January 7, 2019 denial of the Petitioner for a writ of habeas corpus pursuant to the United States Supreme Court, Rule 44.1; Rule 29.2; 4(b)(c); and Article III, Cl.2 of the U.S. Const.; Title 28 U.S.C. §1251(a)(2), and U.S. Const. Amend. XI. The Judicial power of the United States shall not be construed to extend to denial of any unconstitutional violation as provided under Title 28 U.S.C. §2241(3); and Title 18 U.S.C.A. §242. In *Junus v. American Federation of State*, 138 S.Ct. 2448 @ 2486 (2018), the United States Supreme Court holding that: When a federal or state law violates the constitution, the American Doctrine of Judicial Review requires Supreme Court to enforce the constitution.

The court's denial by the U.S. Supreme Court by the Clerk of the Court over the U.S. Constitutions in the Petition for a writ of habeas corpus without overlooked and misapprehended the Petitioner's unconstitutional illegal detention are secured for review and protected by the U.S. Constitution or law of the United States under color of laws and constitution for release under the Title 28 U.S.C. §2241(a)(3) (2018). The court held in *Pachak v. Zinke*, 138 S.Ct. 897 @ 922

(2017) the U.S. Supreme Court holding that: “It is our responsibility under the Constitution to decide a case and controversies according to law. It is our responsibility to, as the judicial oath provides; Administer justice without respect to persons.: 28 U.S.C. §453. And it is our responsibility to “firmly” “inflexibly: the court respectfully dissent. In *Salazar v. Buono*, 130 S.Ct. 1803@ 1817 n.[12] (2010) that congress, the executive, and the judiciary all have a duty to support and defend the Article and Amendments and the United States Constitution.

Here, congress adopted a policy with respect to land it now own in order to resolve specific controversy in congress. The executive and judiciary branches all have a duty to support and defend the constitution. See: *United States v. Nixon*, 418 U.S. 683, 703, 94 S.Ct. 3094, 41 L.Ed.2d 1039 (1974); *Ohlson v. Phillip*, 397 U.S. 317, 90 S.Ct. 1124, 25 L.Ed.2d 337 (1970). The court dissenting that we sustain the constitutionality of a State requirement that judges swear to uphold the United States Constitution.

Now, since the Clerk of this Court committed a serious unconstitutional violation under oath for not protecting the Petitioner’s unconstitutional questions in the Petition for a Writ of Habeas Corpus to the United States Supreme Court, according to Title 28 U.S.C. §453 and the U.S. Const. Art. VI., Cl.2 that shall be bound by oath or affirmation, to support this constitution in the Petitioner’s claims

in the writ of habeas corpus on page ii to iv; and pages 14 to 26. According to *Ullman v. U.S.*, 76 S.Ct. 497, 501 (1956). The United States Supreme Court holding that nothing new can be put into the Constitution except through the amendatory process, nothing old can be taken out of the Constitution without the same process. The Clerk of the Court does not have the authority or the power to resolve the interpretation of a constitutional claim. These problems must be resolved by the justices of the court because the Clerk of the Court shall or cannot overrule, the United State Constitution by simply saying denial. In *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612, 2523 (2013) the constitution and laws of the United States are: "The Supreme Court of the land." U.S. Const. Art. VI, Cl.2. Not the Clerk of the Court and Art. IV. Cl.3, nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular case under U.S. Const. Amend. IX.

The Petitioner's extraordinary writ of habeas corpus for rehearing is open for review by the United States Supreme Court. Court Justice(s) Sotomayor, Ginsburg, Breyer, Kagan, Thomas, under S.C. Rule 20.1.2.4(a); procedure on a Petition for an Extraordinary Writ authorized by 28 U.S.C. §2241(a)(3); or 28 U.S.C. §1651(b). The Petitioner's issue for rehearing for review justify the granting of the Petition for Writ of Habeas Corpus that show the Article and Amendment of the United States Constitutions warrant the exercise of the United

States Supreme Court discretionary powers and adequate relief. The Petitioner's relief cannot be obtained in any other form or from any other courts. In *Napue v. People of the State of Illinois*, 79 S.Ct. 1173, 1178-1179 (1959) the U.S. Supreme Court held that: [6-8] The duty of this court to make its own independent examination of the record when federal constitutional deprivation are alleged is clear. Resting as it does on our solemn responsibility for maintaining the constitution inviolate. *Id* at 1178, *supra*.

Furthermore, the court overlooked and misapprehended the controlling points of the United States Constitution and the controlling case laws of this honorable court justice the unconstitutional issue that cannot be denied or overruled under any reasonable doubt. The court overlooked or misapprehended the joint Appendix "A", "B", "C" in the Petition for Writ of Habeas Corpus. The trial court and the court of appeal, committed unconstitutional violation under oath for denial and not redressing the Petitioner's illegal detention and Appendix "E" Decision of the U. S. Court of Appeal for the Eleventh Circuit denial the Petitioner's writ under Title 28 U.S.C. §2244(b)(3)(A)(2017) and 28 U.S.C. §2241(a)(c)(3)(2017) committed unconstitutional violation for not addressing the following controlling point of the U.S. Constitution and law in the Petitioner's Writ of Habeas Corpus by denying the Petitioner's in forma pauperis when [The U.S. Constitutions written, thus [E]very law enacted by the legislature and congress



must be based or used by the courts on one or more of its powers enumeration in the constitution and the allocation of the power of the court's is the constitution is absolute in for this matter of constitutional violation by the State and federal courts must be reviewed under the U.S. Const. Art. VI, Cl.2; and Fla. Const. Art. II, §5(b). The Petition for Writ of Habeas Corpus must be enforced under the guarantees of the U.S. Constitution that grant the court's no power to restrict, abrogate, or dilute these guarantees that duty of this court is to enforce the U.S. Constitution as written and not to overrule or deny the constructions authority in unconstitutional question (18c). A legal issue must be resolvable by the interpretation of a constitution and which the U.S. Constitution restricts the power of the Congress and the court under the U.S. Const. Art. Cl.3 and Amend. IX and XI.

The Petitioner's extraordinary writ of habeas corpus for rehearing is to draw into question in this case under S.C. Rule 29.4(b)(c); in questions (1)(4)(5)(6)(7) and (8).

CONSTITUTION PROVISION UNDER THE U.S. CONST. AMEND IX PROVIDES THE ENUMERATION IN THE CONSTITUTION OF CERTAIN RIGHTS SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE. THE COURT SHALL ENTER AN ORDER UNDER S.C. RULE 29.4(b)(c) AND TITLE 28 U.S.C. 2241(3).

The Petition for an Extraordinary Writ of Habeas Corpus for Rehearing to the Supreme Court of the United States under S.C. Rule 44.1 and Rule 29.4(b)(c) if the court does not correct this writ for rehearing and which the Petitioner being

held in prison in custody under cruel and unusual punishment in violation of the due process of laws; that “manifest injustice” by the court justice in violation of the U.S. Const. Amend. 8 and 14(1). The U.S. Constitution federal policy being defeated.

#### GROUND ONE

#### THE STATE OR FEDERAL COURT’S CANNOT DIMINISH OR DENY OR SUPERCEDE THE AUTHORITY OR POWER OF THE UNITED STATES CONSTITUTION TO DENY THE RELEASE IN THIS ROUND.

Petitioner is being detained illegally in custody on unlawful conviction and sentence judgment of acquittal granted during trial by the trial court judge in the firearm charge the firearm charge is not part of the indictment count III, where the Petitioner’s conviction and sentence with the same firearm, manifest injustice under double jeopardy. Furthermore, the Fifth Amendment of the United States Constitution provides that no person shall be “subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. Amend. V. Additionally, Article I, Section 9 of the Florida Constitution provides: “No person shall . . . be twice put in jeopardy for the same offense with the same firearm charge.” Art. I, §9, Fla. Const. and U.S. Const. Amend. V. This guarantee is applicable to the State Constitutions through the Fourteenth Amendment of the United States Constitution. The Petitioner’s conviction and sentence is retroactive conviction. The Petitioner is entitled to be discharged on habeas corpus. In support this issue

see the Petition for Writ of Habeas Corpus, page 15-17. (Appendix "A" and "E").

## GROUND TWO

### THE STATE AND FEDERAL COURT'S DETENTION IN THE PETITIONER'S CASE MANIFEST INJUSTICE BECAUSE THIS CONVICTION IS AN INFAMOUS CRIME IN VIOLATION OF THE U.S. CONSTITUTIONS AMENDMENTS 5, 8, AND 14(1).

Petitioner is being detained illegally in custody on an unlawful conviction for a criminal offense not charged in the indictment as a principal by the grand jury or the State Attorney. There is no other person charged or indicted or arrested for this crime. For the Petitioner to be charged as a principal and non-existing crime. The Petitioner's conviction is unconstitutional he is illegally detained in violation of the Fifth Amendment of the United States Constitution provides that "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury. U.S. Const. Amend. V. Additionally Article I, Section 15(a) of the Florida Constitution provides; "No person shall . . . be tried for a capital crime without presentment of an indictment by a grand jury under oath filed by the prosecuting officer of the court. Art. I §15(a), Fla. Const. U.S. Const. Amend. V. This guarantee is applicable to the State Constitution through the Fourteenth Amendment of the United States Constitution. The scope upon indictment charge without resubmission of case to the grand jury otherwise infamous crime. The court cannot proceed any further. The Petitioner's conviction as a principal adest and adest is retroactive conviction. The Petitioner is entitled to

be discharge on habeas corpus. In support this issue see Petition for Writ of Habeas Corpus, page 17-20. (Appendix "A" "B" and "E").

### GROUND THREE

THE PETITIONER'S JURY INSTRUCTION THAT WAS HELD IN MANDIFEST INJUSTICE BECAUSE THERE WAS NO PROBABLE CAUSE TO TAKE THE PETITIONER'S CASE TO TRIAL IN VIOLATION OF DUE PROCESS OF LAWS IN VIOLATION OF LIFE AND LIBERTY.

Petitioner is detained illegally in custody on a wrong jury instruction and jury verdict conviction in the indictment alone, which the jury instruction by the judge only simply repeated the language of the criminal statute, "without any evidence. The indictment is not evidence! It is not any proof the Petitioner is guilty of the crime. The Petitioner's jury trial was an unconstitutional violation of "miscarriage of justice" when the only evidence presented at trial was the statutes in the indictment, and indictment is not evidence against the accused, but rather is nothing more or less than the vehicle by which the State charges that a crime has been committed. But, when there is no evidence to support the conviction or the crime, the indictment does not require the judge to submit the case to the jury or pronounce any judgment or sentence and the Petitioner's case. The Court must grant the judgment of acquittal on all charges. Also, the trial court judge committed unconstitutional plain error in violation of the U.S. Const. Amend. VIII, for instructing the jury with the same firearm charge the Petitioner being acquitted

of by the trial court judge and instructing the jury with a crime not charged in the indictment as a principal by the grand jury. The Petitioner's jury verdict constitutes a "manifest injustice" in violation of due process of laws because the Petitioner's conviction and jury verdict of guilty that was not proof beyond a reasonable doubt! Furthermore, the Seventh Amendment of the United States Constitution provides that: The right of trial by jury shall be preserved and shall be otherwise re-examined in any court of the United States then according to the rule of common law. The Fourteenth Amendment of the United States provides that: Nor shall any State deprive any person of life, liberty, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. VII and XIV. "Additionally, Article I, Section 2 of the Florida Constitution provides: No person shall be deprived of any right and all person are equal before the law." Article I, Section 18. No administrative agency or courts shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law. Article I, Section 21; the courts shall be open to every person for redress of any injury and justice shall be administered without sale, denial or delay and Article I, Section 22: Trial by jury, the right of trial by jury shall be secured to al and remain inviolate.

The United States Supreme Court justices have the authority and the responsibility to interpret and apply the constitution that contains a provision

guaranteeing to resolve the legal issue by the interpretation of the constitution without no deprivation of the Petitioner's equal liberty of the Petitioner protected by the fifth amendment that are preserved. In *Sibro v. N.Y.*, 392 U.S. 40, 88 S.Ct. 1889, 1900, 20 L.Ed.2d 917 (1968), the United States Supreme Court held that: [3] Conventional notice of finality in criminal litigation cannot be permitted to defeat manifest federal policy that the constitutional right to persons liberty shall not be denied without fullest opportunity for plenary without federal judicial review.

The Petitioner's jury verdict conviction is retroactive case and which the Petitioner is entitled to be discharged on habeas corpus. In support of this issue see Petitioner for Writ of Habeas Corpus, pages 20-25. (Appendix "A" "B" "C" "D" AND "E").

REASON FOR GRANTING PETITION FOR A WRIT OF HABEAS  
CORPUS EXTRAORDINARY REHEARING UNDER S.C. RULE  
44(1) GOOD FAITH ACCORDING TO S.C. RULE 29.2.4(b)(c)

The United States Constitution which cannot be overruled or limited power there is no existing laws that can stop the constitution for no controlling any courts wrong decision. The United States Constitution cannot be construed by the congress or the United States Court's Justice System. The United States Constitution is that maximum laws of the land over the federal courts and state courts.

This court, the United States Supreme Court in *Pot v. Ass'n of Am.R.R.*, 135 S.Ct. 1225 @ 1240-1246 (2015) held that: The constitution issue that I have outlined (and perhaps others) all follow the fact that no matter what congress may call Amtrak, the constitution cannot be disregarded.

The court fails to fully correct the errors that require the court of appeals this question. The constitution identifies the original meaning of the constitution is absolute. The enumerated powers under the constitution, resolution of claims against the Petitioner is the classic example. (Contrasting Court's which 'is to be guided by the constitution 'and' cannot travel beyond its bounds").

Now since the courts cannot proceed over the constitution and there is nothing in the language such constitution which the Petitioner can "be held to answer" judgment of acquittal; crime not charged in the indictment by the grand jury and a conviction without any existing evidence at trial, the constitution of the United States 5<sup>th</sup>, 8<sup>th</sup>, and 14(1) amendments prohibits the Petitioner's illegal detention by the State Courts and the Federal Courts in which the Petitioner is entitled to be discharged on habeas corpus. See: *U.S. v. Windson*, 133 S.Ct. 2675, 2695 (2013). The national policy it cannot deny the liberty protected by the due process clause of the Fifth Amendment. The Constitution creates a federal government with limited power. Congress has no powers or the courts except those specified in the constitution. In *U.S. v. Kebodeaux* 133 S.Ct. 2496, 2510-

2511 (2013), *supra*.

The Petition for Writ of Rehearing is entitled to immediate resolution for release. In *Harris v. Nelson*, 394 U.S. 286 @ 300 (1969)(citing 28 U.S.C. 2241(a)(3), See e.g., *Harris v. Nelson*, 520 U.S. 899, 908, (1997), (Harris, we stated that: “if the Petitioner demonstrates that he is . . . entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry. *Hawk v. Olsen*, 326 U.S. 271, @ 276 (1945)(“When . . . error in relation to the federal question of constitutional violation creep into the court record, we have the responsibility to review the proceeding”), which in turn is equated, e.g., with taking action that constitution “specifically prescribes; *Ex Parte Wilson*, *supra*, 114 S.Ct. 417 @ 422 (1985)(“if the crime of which the Petitioner been acquitted of the offense within the meaning of the Fifth Amendment of the United States Constitution or conviction for crime is not charged in the indictment by the grand jury, no court of the United States had jurisdiction to try the Petitioner except upon . . . indictment.” There is no authority to hold the Petitioner in prison under the invalidate sentence.

#### RELIEF SOUGHT

Since there is no existing laws to detain the Petitioner, the court’s cannot use any rule to overrule the United States Constitution or the Florida Constitution by the federal courts and the State Court’s the Petitioner’s Writ of Habeas Corpus



must be granted with the instruction to the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida under Case No. 85-25037 to proceed in this case by discharging the Petitioner from this unlawful custody in violation of the United States Constitution because the U.S. Constitution comment.

### CONCLUSION

The Petitioner is detained in custody under cruel and unusual punishment in violation of the U.S. Const. Amends. IV, V, VIII, and XIV, justice must be served because this conviction and sentence constitutes a manifest injustice by the State Courts and Federal Courts. This Motion for Rehearing is submitted in good faith and not as a means to cause unnecessary delay.

Respectfully submitted,



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